SB CIVIL MISC. APPEAL NO. 1140/2006
(DEVENDRA SHARMA v STATE BANK OF INDIA & ORS..)

HON'BLE MR. JUSTICE R.S. CHAUHAN

DATE OF ORDER:

Mr. Narendra Mishra for the appellant.

The appellant has challenged the order dated 9.1.2006 passed by the Additional District Judge No.1, Jaipur City, Jaipur, whereby he has dismissed the application filed by the appellant under Order 9 Rule 13 read with Section 151 C.P.C.

The brief facts of the case are that the respondent-plaintiff has instituted a suit for recovery of money against the appellant-defendant on 21.7.89. According to the plaint, the appellant had taken loan from the Bank, but had failed to repay it. Despite the publication of the notice in the local newspaper, the appellant did not appear before the learned trial court. Therefore, the learned trial court had no option but to proceed ex-parte against the appellant. The ex-parte order was passed on 19.8.95 and the suit was finally decreed vide order dated 2.1.98. The appellant filed an application under Order 9 Rule 13 C.P.C. on 5.5.99, whereby he pleaded that no notice was served upon him and he came to know about the ex-parte

decree once the execution proceedings commenced against him The respondent Bank filed a reply to the said application. Vide order dated 9.1.06, the learned Judge was pleased to dismiss the said application, as aforementioned. Hence, this appeal before us.

Mr. Narendra Mishra, the learned counsel for the appellant, has vehemently argued that no notice was served upon the appellant. Therefore, he had no knowledge that a suit is pending against him. However, he fairly conceded that the notice was published in the local newspaper in accordance with the orders issued by the trial court. But, he still contended that a publication of notice is not a valid notice in the eyes of law.

We have heard the learned counsel for the appellant and have perused the impugned order. According to Order 5 Rule 20 sub-rule (1-A) C.P.C., where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain. According to sub-rule (2), service substituted by the order of the Court shall be effectual as if it

had been made on the defendant personally. According to the learned counsel, the notice was published in a daily newspaper circulating in the locality in which the defendant resided. Therefore, according to sub-rule (2) of Rule 20, the service is deemed to be effectual as if it has been made on the defendant personally. This deemed provision of law has to be given effect to by the courts. Once a service is deemed to have been effected, it does not lie in the mouth of the appellant to claim that he had no notice of the pendency of the suit. Moreover, he has failed to show any other sufficient reason for not attending the Court during the course of the proceedings between 1989 to 1998 i.e. for a period of nine years. Therefore, the impugned order passed by the learned Judge, is absolutely legal and valid.

In the result, there is no merit in this appeal. It is, hereby, dismissed.

(R.S. CHAUHAN)J.

MRG.